

**DEPARTMENT OF TOXIC SUBSTANCES CONTROL
HAZARDOUS WASTE MANAGEMENT PROGRAM
POLICY AND PROCEDURE**

POLICY AND PROCEDURE # EO-02-005-PP

TITLE: Collecting Overdue Administrative Penalties

AFFECTED PROGRAMS: Administrative Services (AS), Hazardous Waste Management Program (HWMP), Office of Legal Counsel and Investigations (OLCI)

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POLICY AND PROCEDURE: COLLECTING OVERDUE ADMINISTRATIVE
PENALTIES
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I. PURPOSE

This document sets forth the procedure to follow for expediting the collection of overdue administrative penalties assessed for violations of the Health and Safety Code¹, chapter 6.5, or its implementing regulations.

II. AUTHORITY

The Department of Toxic Substances Control (DTSC) has the authority to pursue legal action against a respondent that fails to keep current on the payment of administrative penalties. Pursuant to section 25184.1:

"If any administrative order or decision that imposes a penalty is issued pursuant to this chapter or Chapter 6.8, (commencing with Section 25300), the administrative order or decision has become final, and, if applicable, a petition for judicial review of the final order or decision has not been filed within the time limits prescribed in Section 11523 of the Government Code, the department may apply to the clerk of the appropriate court for a judgment to collect the administrative penalty. The department's application, which shall include a certified copy of the final administrative order or decision, constitutes a sufficient showing to warrant issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered."

III. POLICY STATEMENT

It is the policy of DTSC to consistently and expeditiously pursue collection of all overdue assessed penalties.

¹All further statutory references are to the Health and Safety Code unless otherwise indicated.

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IV. PROCEDURES AND GUIDELINES

DTSC's Administrative Services (AS), Financial Operations Branch (FOB) generates a monthly "Fines and Penalties Collection Report" that identifies persons with accounts that are 30 days past due (i.e., delinquent accounts). A certified letter, with return receipt requested, will be sent by DTSC's FOB to all persons identified with delinquent accounts (attachment 1). The letter must request payment and inform the respondent that DTSC will use the procedure set forth in section 25184.1, if the payment of assessed penalties is not made within 30 days of receipt of the letter and, if applicable, will deny or suspend the facility's permit to operate in accordance with section 25189.3. Section 25189.3 (c)(1) mandates that DTSC suspend, deny or revoke a hazardous waste facility permit to operate for nonpayment of assessed penalties.

Correspondence from DTSC to the respondent must include the Office of Legal Counsel and Investigations (OLCI) and the Hazardous Waste Management Program's (HWMP) Permitting (PD), State Regulatory Programs (SRPD) and Statewide Compliance (SCD) Divisions in the distribution list. If payment is not received within 30 days, a referral by FOB to OLCI should be completed with a notice to PD, SRPD and SCD.

The referral (attachment 2) from FOB through HWMP to OLCI must indicate that payment has not been received and must include a certified copy (attachment 3) of the filed administrative order or decision, and a request that the order or judgment be filed with the appropriate court. PD, SRPD and SCD must be copied to assure they are notified so that suspension or denial of a facility permit to operate is initiated and inspection of a facility with a suspended permit is conducted. If OLCI determines that conversion to a civil judgment is appropriate, OLCI will submit the referral from FOB to the Office of the Attorney General (AG). The submittal to the AG will occur within 30 days after OLCI has determined that all the necessary materials have been submitted for filing of the order or judgment with the appropriate court. In accordance with section 25184.1, the court clerk should enter the judgment, which shall have the same force as a civil judgment. OLCI will provide a copy of the court judgment to FOB. A second certified letter (attachment 4) will be sent by FOB notifying the person that the administrative order has been converted to a civil judgment and that failure to pay the assessed penalties could be in contempt of court.

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On a case-by-case basis, DTSC may decide to cease collection efforts where further action may not be successful or cost-effective. In order to document instances in which DTSC makes the determination that further action should not be pursued, a "No Further Collection Action (NFCA) Memorandum" will be prepared. The recommendation not to pursue further collection of assessed penalties and prepare the NFCA memo may be initiated by OLCI, FOB and/or PD, SRPD and SCD, as appropriate. Review and approval of the NFCA recommendation must be routed for signature and approval by OLCI, FOB, and the appropriate HWMP Division Chief. Upon approval of the NFCA recommendation, the respondent's name will be removed from the monthly "Fines and Penalties Collection Report." In addition, FOB, OLCI and the appropriate HWMP Division Chief(s) will participate in an annual meeting held during the third fiscal quarter to identify persons with overdue accounts where further collection is not cost effective or possible.

NFCA memos should be brief and identify the basis for the "no further action" recommendation (attachment 5). At a minimum, the memo must identify the number of attempts at collecting assessed penalties, costs incurred in pursuing payment of assessed penalties, when and under what circumstances the case was referred to OLCI for filing with the appropriate court, and, if appropriate any financial statements and/or records that demonstrate the facility's inability to pay the assessed penalty.

V. ROLES AND RESPONSIBILITIES

A. Administrative Services - Financial Operations Branch

- Compile, maintain and distribute the monthly "Fines and Penalties Collection Report" that identifies persons with accounts overdue in payment of assessed penalties.
- Obtain the permit status of persons with delinquent accounts from PD.
- Send a certified letter, with return receipt requested, to persons with delinquent accounts within 30 days after knowledge of an overdue assessed penalty, with copy to Headquarters PD, SRPD, SCD and OLCI.

The letter must inform the person of 1) the delinquency 2) if applicable, the potential of permit suspension pursuant to section 25189.3, and 3) the authority DTSC has to pursue legal action against a respondent who fails to pay penalties.

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- Refer case to OLCI if payment is not received within 30 days of receipt of the letter and provide a copy of the referral to Headquarters PD, SRPD and SCD.
- As necessary, prepare NFCA memo in coordination with OLCI, PD, SRPD and SCD for review and approval, as appropriate.
- Delete a respondent's name from the monthly "Fines and Penalties Collection Report" once a NFCA is final and approved.
- Participate in annual meeting held during the third fiscal quarter to identify persons with overdue accounts where further collection is not cost effective or possible.

B. Headquarters Hazardous Waste Management Program

- Designate contacts for PD, SRPD and SCD to coordinate with FOB and notify facilities of intent to suspend permit for failure to pay assessed penalties, if applicable.
- As necessary, prepare NFCA memo in coordination with FOB, OLCI and regional PD, SRPD and SCD for review and approval, as appropriate.
- Compile, maintain and distribute the list of respondents with denied and/or suspended permits to the PD, SRPD and SCD Regional Offices.
- Provide permit status of persons with delinquent accounts to FOB.
- Participate in annual meeting held during the third fiscal quarter to identify persons with overdue accounts where further collection is not cost effective or possible.

C. Office of Legal Counsel and Investigations

- Provide legal support in evaluating claims of inability to pay penalties, and if appropriate, refer case to Program Audits.
- Refer case to the Office of the AG.
- Provide periodic status reports to AS on cases referred to the Office of the AG and any subsequent determinations.

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- Participate in annual meeting held during the third fiscal quarter to identify persons with overdue accounts where further collection is not cost effective or possible.
- As necessary, prepare NFCA memo in coordination with FOB, PD, SRPD and SCD for review and approval, as appropriate.

D. Regional HWMP Offices

- Assist in the determination to cease further collection actions at facilities within the region.

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CONTACT:

Hazardous Waste Management Program
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806
(916) 322-0349 (916) 323-6043

OR Hortensia Muniz
(916) 324-1818
hmuniz@dtsc.ca.gov

This policy and procedure is intended to provide guidance on collecting overdue administrative penalties. However, this policy and procedure does not replace or supersede relevant statutes and regulations. The information contained in this policy and procedure is based upon the statutes and regulations in effect as of the date the policy and procedure was signed. Interested parties are advised to keep apprised of subsequent changes to relevant statutes and regulations.

This policy and procedure expires five years from the date of the signature.

November 20, 2002
Date

[Original Signed By]
Edwin F. Lowry
Director

Attachment 1

(SAMPLE LANGUAGE OF FIRST LETTER)

XXXXXXX
XXXXXXX
XXXXXXX
XXXXXX, XX XXXXX

OVERDUE PENALTY (*and, if applicable*) AND NOTICE OF INTENT TO SUSPEND OR DENY PERMIT

Dear Sirs:

An *administrative order or decision* docket # (*number of docket*) became final on (*date order was signed*). The order requires payment of the penalty by (*provide a specific date that the penalty became overdue or discuss the payment arrangements that were agreed to*). Payment of the penalty in the sum of (*\$XXX amount*) must be received within 30 days of the date of this letter to avoid additional penalties being assessed and/or referral to the appropriate court as authorized under Health and Safety Code, section 25184.1.

Health and Safety Code, section 25184.1, authorizes the Department of Toxic Substances Control (DTSC) to apply to the clerk of the appropriate court for a judgment to collect administrative penalties. The judgment entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered. (*Permitting Division will provide permit status, include if applicable*) In accordance with section 25189.3, payment of assessed penalties must be received by (*specify date 30 days from receipt of letter*) to avoid suspension or denial of the facility permit to operate.

If payment has been made, please provide a copy of the canceled check, both front and back. If you have any questions please feel free to contact Mr./Ms. _____ of my staff at (916)xxx-xxxx.

Sincerely,

XXXX XXXX
Accounting Unit

cc. Office of Legal Counsel and Investigations
Headquarters Permitting Division
Headquarters Statewide Compliance Division
Headquarters State Regulatory Programs Division

Attachment 2

DEPARTMENT OF TOXIC SUBSTANCES CONTROL
OFFICE OF LEGAL COUNSEL AND INVESTIGATIONS
Request for Legal Review

To: XX. XXXXXX XXXXX
Chief Counsel and Deputy Director
Office of Legal Counsel and Investigations

Date:

Via: Hazardous Waste Management Program Staff

From: Financial Operations Branch

Groupwise ID:

Phone No:

Case/Site:

Legal Services Requested: REQUEST FOR ORDER TO BE FILED WITH THE APPROPRIATE COURT, Order (docket) # _____, in the matter of (respondent name)

Date response requested by:

Instructions

Section 1 to be filled out by the appropriate Hazardous Waste Management Program Division

Section 2 to be filled out by the Office of Legal Counsel and Investigations

Section 1

PCA:

Site/Project Code:

Work Phase:

MPC Code:

Section 2

Program staff assigned:

Program Senior/Supervisor assigned:

Comments:

Staff attorney assigned:

Phone No.:

OLCI Supervisor:

Phone No.:

OLCI Category Code:

Other disposition, questions or requirements:

Attachment 3

CERTIFICATION OF OFFICIAL WRITING (EVIDENCE CODE SECTION 1530)

I, the undersigned, hereby certify that :

1. The attached writing is a true and correct copy of the original writing in the custody of the Department of Toxic Substances Control.
2. The original writing, Enforcement Order, Docket HWCA- ~~####-####~~, in the Matter of *(Name of Respondent)*

Address on record

3. I am a public employee with legal custody of the above described writing and am authorized to execute this certification in accordance with Evidence Code Section 1530

4. My business address and telephone number are as follows:

Work address

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, except as to those matters stated upon information and belief, and as to those matters I believe them to be true.

Executed at *(City)*, California on *(date)*.

Signature
Printed Name

Attachment 4

(SAMPLE LANGUAGE OF SECOND LETTER)

XXXXXXX
XXXXXXX
XXXXXXX
XXXXXX, XX XXXXXX

NOTICE OF CIVIL JUDGMENT

Dear Sirs:

This to inform you that *administrative order or decision* docket # _____ was filed with the appropriate court and converted to a civil judgment.

Health and Safety Code, section 25184.1, authorizes the Department of Toxic Substances Control (DTSC) to apply to the clerk of the appropriate court for a judgment to collect administrative penalties. The judgment entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

If payment has been made, please provide a copy of the canceled check, both front and back. If you have any questions please feel free to contact Mr. / Ms. _____ of my staff at (916)xxx-xxxx.

Sincerely,

XXXX XXXX
Accounting Unit

cc. Office of Legal Counsel and Investigations
Headquarters Permitting Division
Headquarters Statewide Compliance Division
Headquarters State Regulatory Programs Division

ATTACHMENT 5

NO FURTHER COLLECTION ACTION MEMORANDUM

Site Name:

Site Code:

Case Background:

Description of the facility and violations identified. Discuss the number of attempts at collecting assessed penalties, costs incurred in pursuing payment of assessed penalties, when and under what circumstances the case was referred to OLCI for filing with the appropriate court, and final ruling by the court.

Amount of Penalties that will not be pursued:

Recommended Decision: The recommendation to cease further collection attempts should include a brief discussion of the facility's financial status, the amount incurred by DTSC in pursuing collection of overdue penalties (the outstanding balance should be weighed against additional expenses in pursuing collection) and statutes of limitation. Documentation supporting the decision should be attached.

Prepared by _____ Date _____

Include signature blocks as appropriate

Office of Legal Counsel and Investigations _____ Date _____

Chief _____ Date _____
Financial Operations Branch

Include the appropriate Division Chief

Chief _____ Date _____
State Regulatory Programs Division

Chief _____ Date _____
Statewide Compliance Division

Chief _____ Date _____
Permitting Division